IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 9462 of 2007(B)

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PETITIONER:

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VARGHESE MATHEW THARAKAN,AGED 40,
S/O.VARGHESE THARAKAN,CONVENOR,MULAKKUZHA
GRAMAPANCHAYATH PARISTHIDI SAMRAKSHANA SAMITHY,
GIRIDEEPAM,ANGADICKAL SOUTH P.O,CHENGANNUR.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS:

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1.MULAKKUZHA GRAMAPANCHYATH,REPRESENTED BY
THE SECRETARY,MULLKKUZHA GRAMAPANCHAYATH,CHENGANUR
ALLEPPY DISTRICT.

2.THE OFFICER IN CHARGE,HUTCHISON ESSAR
CELLULAR LIMITED,XL-5115,ASHIS BUILDING,
SHANMUGHAM ROAD,KOCHI-682 031.

3.KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY THE MEMBER SECRETARY,KERALA STATE
POLLUTION CONTROL BOARD,THIRUVANANTHAPURAM.

R3 BY ADV. SRI.M.K.CHANDRAMOHAN DAS
R2 BY ADV.MR.A.M.SHAFEEQUE
R1 BY ADV.SRI.NIDHI BALACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**PIUS C. KURIAKOSE,J.**

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W.P.(C)No.9462 of 2007

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Dated: 28th March, 2007

**JUDGMENT**

A resident of the 1st respondent-Panchayat has filed this Writ Petition seeking a declaration that the 2nd respondent-Mobile Telephone Company is not entitled to install or run a mobile telephone tower within the area of the 1st respondent-Panchayat and also a Writ of mandamus commanding the Panchayat to ensure that the 2nd respondent is not installing or functioning or energising any mobile phone tower within the area of the Panchayat.

2. Adv.Mr.A.M.Shafeeque enters appearance on behalf of the 2nd respondent and Adv.Mr.Nidhi Balachandran enters appearance on behalf of the 1st respondent-Panchayat. The third respondent, the Pollution Control Board appears through its Standing Counsel Adv.Mr.M.K.Chandramohan Das.

3. As rightly submitted by Mr.Shafeeque the issue is directly covered by the Division Bench judgment of this court in **Reliance Infocom Ltd. v. Chemanchery Grama Panchayat** (2006(4) KLT 695). This court had occasion to quash general orders passed by the Ombudsman directing the local authorities to insist on the service providing mobile telephone companies producing No Objection Certificate issued by the Atomic Energy Commission, before they are

permitted to install and energise telephone towers. I had occasion to go through copy of the affidavit which was submitted by the Atomic Energy Regulatory Board in the Bombay High Court as well as copy of a report submitted by the World Health Organisation. The affidavit was considered not only by the Bombay High Court but also by the Division Bench of this court in **Reliance Infocom Ltd. v. Chemanchery Grama Panchayat** (supra). Considering the affidavit, the report and also the observations of the Division Bench of this court in aforesaid judgment, the relief sought for by the petitioner cannot be granted. Accordingly, the Writ Petition will stand dismissed. However, if the 2nd respondent is desirous of installing a diesel generator, they will have to obtain consent from the Pollution Control Board.

srd **PIUS C.KURIAKOSE, JUDGE**